

REPUBLIC OF SOUTH AFRICA

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# EMPLOYMENT OF EDUCATORS BILL

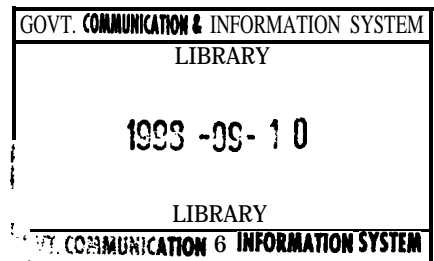
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*(As amended by the **Portfolio** Committee on Education (National Assembly))*

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(MINISTER OF EDUCATION)

[B 90B—98]



REPUBLIEK VAN SUID-AFRIKA

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# WETSONTWERP OP DIE INDIENSNEMING VAN OPVOEDERS

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*(Soos gewysig deur die Porte feuljekomitee oor Onderwys (Nasionale Vergadering))*

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(MINISTER VAN ONDERWYS)

[W 90B—98]

ISBN 0621284823

# BILL

To provide for the employment of educators by the State, for the regulation of the conditions of service, discipline, retirement and discharge of educators and for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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### Definitions

1. In this Act, unless the context indicates otherwise—

- (i) “adult basic education centre” means any centre which is under the control of any provincial department of education and in which basic education programmes are presented to persons of or over the age of 16 Years; (xiii) 25

- (ii) “departmental office” means any office or institution controlled or administered by the Department of Education or any provincial department of education, but does not include any public school, further education and training institution or adult basic education centre; (i)
- (iii) “Department of Education” means the department established in terms of section 7(2) read with Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), responsible for education at national level; (iii)
- (iv) “Director-General” means the Director-General: Education; (iv)
- (v) “educator” means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, further education and training institution, departmental office or adult basic education centre and who is appointed in a post on any educator establishment under this Act; **(X)**
- (vi) “employer”, in relation to any provision of Chapter 4, 5 or 7 which applies to, 15 or is connected with —
  - (a) an educator in the service of the Department of Education, means the Director-General;
  - (b) an educator in the service of a provincial department of education, means the Head of Department; (xvi) 20
- (vii) “further education and training institution” means a further education and training institution as defined in section 1 of the Further Education and Training Act, 1998, but does not include any private further education and training institution; (vi)
- (viii) “Head of Department”, in relation to a provincial department of education, 25 means the head of the provincial department of education; (ii)
- (ix) “Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995); (xvii)
- (x) “Member of the Executive Council” means the member of the Executive Council of a province responsible for the education portfolio of that province; 30 (vii)
- (xi) “Minister” means the Minister of Education; (viii)
- (xii) “prescribed” means prescribed by regulation; (xv)
- (xiii) “provincial department of education” means a department responsible for education in a province and includes all public schools, further education and 35 training institutions, departmental offices and basic adult education centres in such province; (xi)
- (xiv) “public school” means a public school as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); (ix)
- (xv) “regulation” means a regulation made under section 35; (xii) 40
- (xvi) “this Act” includes a regulation (v)
- (xvii) “trade union” means any trade union which is a member of the Education Labour Relations Council. (xiv)

#### Application of Act

2. The provisions of this Act shall apply in respect of the employment of educators 45 at—

- (a) public schools;
- (b) further education and training institutions;
- (c) departmental offices; and
- (d) adult basic education centres. 50

#### Employers of educators and other persons

3. (1) Save as is otherwise provided in this section—

- (a) the Director-General shall be the employer of educators in the service of the Department of Education in posts on the educator establishment of the said Department for **all** purposes of employment; and 55
- (b) the Head of Department shall be the employer of educators in the service of the provincial department of education in posts on the educator establishment of that department for all purposes of employment.

(2) For the purposes of determining the salaries and other conditions of service of educators, the Minister **shall** be the employer of **all** educators. 60

(3) For the purposes of creating posts—

- (a) on the educator establishment of the Department of Education, the Minister shall be the employer of educators in the service of the said Department; and
- (b) on the educator establishment of a provincial department of education, the Member of the Executive Council shall be the employer of educators in the service of that department. 5

(4) A public school shall be the employer of persons in the service of the said school as contemplated in section 20(4) or (5) of the South African Schools Act, 1996 (Act No. 84 of 1996).

(5) A further education and training institution shall be the employer of persons in the service of the said institution as contemplated in section 14(2) or (3) of the Further Education and Training Act, 1998. 10

## CHAPTER 2

### CONDITIONS OF SERVICE AND EDUCATOR ESTABLISHMENTS

Salaries and other conditions of service of educators 15

4. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators.

(2) Different salaries and conditions of service may be so determined in respect of different ranks and grades of educators, educators appointed at or outside educational institutions or educators appointed in different sectors of education. 20

(3) A determination of the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance. 25

Educator establishments

5. (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts—

- (a) the educator establishment of the Department of Education shall consist of the posts created by the Minister; and 30
- (b) the educator establishment of a provincial department of education shall consist of the posts created by the Member of the Executive Council.

(2) The educator establishment of any public school, further education and training institution, departmental office or adult basic education centre under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said school, institution, office or centre by the Head of Department from the educator establishment of that department. 35

(3) For the purposes of this Act—

- (a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to redesignate, to convert or to abolish the post; and 40
- (b) the power to allocate a post under this section shall include the power to reallocate the post.

## CHAPTER 3

APPOINTMENTS, PROMOTIONS AND TRANSFERS 45

Powers of employers

6. (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator—

- (a) in the service of the Department of Education shall be made by the Director-General; or 50

(b) in the service of a provincial department of education shall be made by the Head of Department.

(2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.

(3) (a) Any appointment, promotion or transfer to any post on the educator establishment of a public school or a further education and training institution, may only be made on the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school or further education and training institution due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are so in excess and suitable for the post concerned.

(b) The Head of Department may only decline the recommendation of the governing body of the public school or the council of the further education and training institution, if—

- (i) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer has not been followed;
- (ii) the candidate does not comply with any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer;
- (iii) the candidate is not registered, or does not qualify for registration, as an educator with the South African Council for Educators;
- (iv) sufficient proof exists that the recommendation of the said governing body or council, as the case may be, was based on undue influence; or
- (v) the recommendation of the said governing body or council, as the case may be, did not have regard to the democratic values and principles referred to in section 7(1).

(c) If the Head of Department declines a recommendation in terms of paragraph (b), the governing body or council concerned shall make another recommendation in accordance with paragraph (a), for consideration by the Head of Department.

#### Appointments and filling of posts

7. (1) In the making of any appointment or the filling of any post on any educator establishment under this Act due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and which include the following factors, namely—

- (a) the ability of the candidate; and
- (b) the need to redress the imbalances of the past in order to achieve broad representation.

(2) A person may be appointed under this Chapter—

- (a) in a permanent capacity, whether on probation or not;
- (b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or
- (c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

#### Transfer of educators

8. (1) Subject to the provisions of this Chapter—

- (a) the Director-General or the Head of Department may transfer any educator in the service of the relevant department to any post or position in any other department of State with the prior approval of the person in that other department of State having the power to appoint or to transfer and with the consent of that educator; and
- (b) the Director-General may transfer any educator in the service of the Department of Education to any other post in the Department; and

(c) the Head of Department may transfer any educator in the service of the provincial department of education to any other post in that department.

(2) No transfer to any post on the educator establishment of a public school or a further education and training institution shall be made unless the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, has been obtained.

(3) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the consent in writing of that educator, except in accordance with the provisions of Chapter 5.

#### Secondment of educators

9. (1) Any educator in the service of the Department of Education or any provincial department of education may with the consent in writing of that educator be placed at the disposal of—

- (a) another department of education;
- (b) another **government**;
- (c) any council, institution or body established by or under any law; or
- (d) any other body or person,

for a particular service or for a stated period on such conditions, in addition to the conditions prescribed by or under any law, as may be determined by the Director-General or the Head of Department, as the case may be.

(2) While so placed at such disposal, the educator shall remain subject to the provisions of this Act.

## CHAPTER 4

### TERMINATION OF SERVICES

#### Retirement

10. (1) (a) Subject to the provisions of this section, an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 65 years.

(b) An educator who attains the said age after the first day of a month shall be deemed to have attained that age on the first day of the following month.

(2) Notwithstanding the provisions of subsection (1), an educator who was in employment immediately before 2 September 1994 in terms of a law repealed by the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994), shall have the right to retire on or after attaining the retirement age applicable to the educator immediately before the said date.

(3) (a) Notwithstanding the provisions of subsection(1) or (2), an educator shall have the right to retire on or after attaining the age of 55 years.

(b) Notwithstanding the absence of any reason for discharge in terms of section 1 l(1), the employer may, at the request of an educator, allow the educator to retire before attaining the age of 55 years, if the employer is of the **opinion**—

- (i) that a sufficient reason exists **therefor**; and
- (ii) that the retirement will be to the advantage of the State.

(4) Notwithstanding the provisions of this section, an **educator**—

- (a) who was in employment immediately before 1 May 1996; and
- (b) who, without interruption of service, has completed a period of ten years continuous pensionable service in terms of the pension law applicable to the educator; and

(c) who has attained the age of 50 years, shall have the right to retire.

#### Discharge of educators

11. (1) The employer may, having due regard to the applicable provisions of the Labour Relations Act, discharge an educator from **service**—

- (a) on account of continuous ill-health;

- (b) on account of the abolition of the educator's post or any reduction in, or reorganisation or readjustment of the post establishments of, departments, schools, institutions, offices or centres;
  - (c) if, for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department, school, institution, office or centre in which the educator is employed, or will otherwise be in the interest of the State;
  - (d) on account of unfitness for the duties attached to the educator's post or incapacity to carry out those duties efficiently;
  - (e) on account of misconduct;
  - (f) if the educator was appointed in the post in question on the grounds of a misrepresentation made by the educator relating to any condition of appointment; and
  - (g) if, in the case of an educator appointed on probation, the educator's appointment is not confirmed.
- (2) If an educator is discharged from service under paragraph (f) of subsection (1), that educator shall be deemed to have been discharged on account of misconduct.

#### Discharge on account of ill-health

12. (1) (a) Whenever there are reasonable grounds for believing that an educator is incapable of carrying out the duties attached to the educator's post on account of continuous ill-health, the employer may appoint a team of examiners of at least two medical practitioners to examine the educator at the State's expense and to report on the educator's state of health.

(b) An educator is entitled to nominate any other medical practitioner of the educator's choice and at the educator's own expense as a member of the team of examiners.

(c) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only—

(i) in accordance with the ethics of medical practice;

(ii) if required by law or court order; or

(iii) if the employee has consented in writing to the release of that information.

(2) If an educator refuses or fails to be subjected to an examination under this section when requested to do so by the employer, the educator may be discharged from service, in which case the educator shall be deemed to have been discharged on account of misconduct.

(3) If an educator applies for a discharge from service on account of continuous ill-health, the provisions of subsection (1) shall apply, with the necessary changes, to such application.

#### Discharge of educators appointed on probation

13. (1) If it is not desirable to confirm the appointment, transfer or promotion of an educator on probation, the employer may, notwithstanding anything to the contrary contained in this Act but subject to this section—

(a) extend the period of probation of the educator; or

(b) after reasonable notice to the educator, discharge the educator from service upon the expiry of the period of probation or any extension thereof.

(2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if—

(a) the educator has been diligent;

(b) the educator's conduct has been uniformly satisfactory;

(c) the educator is in all respects suitable for the post which the educator holds; and

(d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.

(3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.

### Certain educators deemed to be discharged

14. (1) An educator appointed in a permanent capacity who—
- (a) is absent from work for a period exceeding 14 consecutive days without permission of the employer;
  - (b) while the educator is absent from work without permission of the employer, assumes employment in another position; 5
  - (c) while suspended from duty, resigns or without permission of the employer assumes employment in another position; or
  - (d) while disciplinary steps taken against the educator have not yet been disposed of, resigns or without permission of the employer assumes employment in another position, 10

shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct, in the circumstances where—

- (i) paragraph (a) or (b) is applicable, with effect from the day following immediately after the last day on which the educator was present at work; or 15
- (ii) paragraph (c) or (d) is applicable, with effect from the day on which the educator resigns or assumes employment in another position, as the case may be.

(2) If an educator who is deemed to have been discharged under paragraph (a) or (b) of subsection (1) at any time reports for duty, the employer may, on good cause shown and notwithstanding anything to the contrary contained in this Act, approve the reinstatement of the educator in the educator's former post or in any other post on such conditions relating to the period of the educator's absence from duty or otherwise as the employer may determine. 20

### Resignations

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15. (1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.

(2) If the name of an educator is struck off the register of educators kept by the South African Council for Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the day following immediately after the day on which the educator's name was so struck off. 30

## CHAPTER 5

### INCAPACITY AND MISCONDUCT

#### Incapable educators

16. (1) If it is alleged that an educator is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently, the employer may appoint in writing a person to inquire into the relevant allegations. 35

(2) The person who is to conduct the inquiry shall, in consultation with the employer, determine the time and place of the inquiry, and the employer shall give the educator concerned reasonable notice in writing of the time and place so determined and furnish that educator with a statement in writing setting out the grounds on which the educator is alleged to be unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently. 40

(3) The employer may authorise any person—

- (a) to attend the inquiry; 45
- (b) to adduce evidence and arguments in support of the allegations contemplated in subsection (2); and
- (c) to cross-examine any person who has given evidence in rebuttal of the said allegations.

(4) At the inquiry the educator concerned shall have the right to be present, to be assisted or represented by another person, to give evidence and, either personally or through a representative—

- (a) to be heard;
- (b) to call witnesses;



- (c) to cross-examine any person called as a witness in support of the allegations contemplated in subsection (2); and
- (d) to have access to documents produced in evidence.
- (5) The person conducting the inquiry shall keep a record of the proceedings at the inquiry and of all evidence given thereat. 5
- (6) At the conclusion of the inquiry the person conducting the inquiry shall—
- (a) find whether or not the educator concerned is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently;
- (b) inform the educator of the finding; and
- (c) report to the employer on the result of the inquiry. 10
- (7) If the person conducting the inquiry has found that the educator concerned is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently, that educator may, within 14 days after the day on which the educator was informed of that finding, submit to the employer representations in writing regarding the steps which may be taken under subsection (8). 15
- (8) (a) After having considered the documents relating to the inquiry and any representations submitted to the employer, the employer may—
- (i) take no further steps in the matter;
- (ii) transfer the educator concerned to another post for which the educator is suitable or direct that the educator be employed additional to the educator establishment; 20
- (iii) reduce the educator's salary or grade or both the salary and the grade to such extent as the employer may determine;
- (iv) take the steps contemplated in subparagraph (ii) as well as the steps contemplated in subparagraph (iii); or 25
- (v) discharge the educator from service with effect from such date as the employer may determine.
- (b) The employer shall as soon as possible inform the educator concerned in writing of the decision taken by the employer under paragraph (a) and of that educator's right of appeal in terms of subsection (9). 30
- (9) (a) An educator shall have the right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding that the educator is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently or against the decision of the employer, or against that finding as well as that decision, within 21 days after the day on which the educator was informed of that decision. 35
- (b) If the educator notes an appeal in accordance with paragraph (a), the decision of the employer shall not be implemented before the disposal of the appeal.
- (c) The Minister or the Member of the Executive Council, as the case may be, may condone any late noting of an appeal upon good cause being shown. 40
- (10) After having considered the documents relating to the appeal, the Minister or the Member of the Executive Council may—
- (a) in the case of an appeal against the finding that the educator concerned is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently— 45
- (i) dismiss the appeal and confirm that finding; or
- (ii) uphold the appeal wholly or in part and set aside or vary that finding;
- (b) in the case of an appeal against the decision of the employer—
- (i) dismiss the appeal and confirm that decision; or
- (ii) uphold the appeal wholly or in part and set aside or vary that decision, or 50 substitute for that decision such other decision as the employer, in the opinion of the Minister or the Member of the Executive Council, as the case may be, ought to have taken.
- (11) The Minister or the Member of the Executive Council shall cause the educator who noted an appeal and the employer to be informed in writing of the decision on the 55 appeal.

### Misconduct

17. (1) An educator shall be guilty of misconduct if the educator—

- (a) contravenes or fails to comply with a provision of this Act relating to education;
- (b) performs or causes or permits to be performed, or connives at any act which is prejudicial to the administration, discipline or efficiency of any department of education, departmental office or educational institution; 5
- (c) disobeys, **disregards** or **wilfully** defaults in carrying out a lawful order given to the educator by a person having the authority to, give it, or by word or conduct displays insubordination;
- (d) is negligent or indolent in the carrying out of the duties attached to the educator's **post**; 10
- (e) without permission of the employer, undertakes any private agency or private work in relation to a matter connected with the carrying out of the educator's official duties;
- (f) attempts to secure intervention from any person, other than a person in the employ of the State or a trade union, in connection with the educator's position or conditions of service, unless such intervention occurs in an endeavour to obtain redress of any grievance in accordance with the Labour Relations Act or through Parliament or the relevant provincial legislature, as the case may be; 15
- (g) behaves in a disgraceful, improper or unbecoming **manner**, or, while on duty, 20 is discourteous to any person, or commits sexual or any other form of harassment;
- (h) while on duty or acting in an official capacity, is under the influence of intoxicating liquor or stupefying drugs;
- (i) without prior permission of the employer, discloses otherwise than in carrying 25 out the educator's official duties, information gathered or obtained by the educator through the educator's employment, or uses that information for any purpose other than for carrying out the educator's official duties, whether or not the educator discloses the information;
- (j) without prior permission of the employer, accepts or demands in respect of the 30 carrying out of or the failure to carry out the educator's duties any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission", fee or reward;
- (k) misappropriates or makes improper use of any property of the State under 35 circumstances not amounting to an **offence**;
- (l) commits an **offence**;
- (m) without leave or a valid reason, is absent from office or duty; or "
- (n) with a view to obtaining any privilege or advantage in connection with the employer's **official** position or **duties**, or to causing prejudice or injury to the 40 State or a department of education or a fellow employee, makes a false or incorrect statement knowing it to be false or incorrect.

(2) The acquittal or the conviction of an educator by a court of law on a charge of any **offence** shall not preclude the taking of disciplinary steps against the educator in terms of this Act, even if the facts set out in the charge of misconduct, should they be proven, 45 would constitute the **offence** set out in the charge on which the educator was so acquitted or convicted or any other **offence** on **which** the educator could have been convicted in the trial on the former charge.

(3) If the misconduct with which an educator is charged amounts to an **offence** of which the educator was convicted by a court of law, a certified copy of the record of the 50 trial and the conviction by that court shall, after the educator has been identified as the person who was convicted according to the record, be sufficient proof that the educator committed that **offence unless**—

- (a) the conviction has been set aside by a competent court; or
- (b) it is proved that the educator was in fact erroneously convicted. 55

### Preliminary investigation of misconduct

18. (1) Whenever an educator is accused of misconduct, the employer may in writing appoint a person as investigating officer—
- (a) to investigate the matter;
  - (b) to obtain evidence in order to determine whether there are grounds for a charge of misconduct against that educator; and
  - (c) to report to the employer thereon.
- (2) An investigating officer shall not question the educator concerned unless the investigating officer informs that educator—
- (a) that the educator has the right to be assisted or represented by another person;
  - (b) that the educator is not obliged to make any statement; and
  - (c) that any statement so made maybe used in evidence against the educator.

### Charge of misconduct

19. (1) The employer may in writing charge an educator with misconduct if the employer is of the opinion that sufficient grounds for such a charge exist, whether or not an investigation contemplated in section 18 was carried out.
- (2) A charge of misconduct shall be served on the educator concerned in the prescribed manner, and shall be accompanied by a direction calling on the educator to submit within 21 days after the service of the charge a written admission or denial of the charge and, should the educator so desire, an explanation in writing regarding the misconduct with which the educator is charged.
- (3) The employer may at any time withdraw a charge of misconduct.
- (4) If the employer has been informed that an educator charged with misconduct is a member of a trade union, the employer shall in writing notify the trade union concerned of the charge and of the particulars thereof.
- (5) An educator who admits the charge shall be deemed to be guilty of the misconduct with which the educator has been charged.

### Suspension of educators

20. (1) Subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the employer may at any time before or after charging an educator with misconduct suspend that educator from duty on such conditions as the employer may determine.
- (2) Before suspending an educator from duty, the employer shall in a notice in writing addressed to that educator—
- (a) inform the educator of the employer's intention to suspend the educator from duty;
  - (b) furnish the educator with the reasons for the intended suspension; and
  - (c) call upon the educator to show cause within the period specified in the notice, which period shall not be less than 14 days from the date of the notice, why the educator should not be so suspended.
- (3) After considering any representations received in accordance with subsection (2)(c), the employer may—
- (a) proceed with the suspension of the educator under subsection (1); or
  - (b) refrain from taking any further steps under the said subsection (1),
- and the employer shall inform the educator concerned in writing of the decision under this subsection.

### Inquiry by disciplinary tribunal

21. (1) If an educator charged with misconduct—
- (a) denies the charge; or
  - (b) fails to comply with the direction contemplated in section 19(2),

the employer shall appoint a disciplinary tribunal consisting of a chairperson and two other persons, one of whom shall be nominated by the educator or the trade union of which the educator is a member, to inquire into the charge.

(2) The chairperson of the disciplinary tribunal shall, in consultation with the employer, determine the time and place of the inquiry, and the employer shall give the 5 educator and trade union concerned 14 days' notice in writing of the time and place so determined.

(3) For the purposes of the inquiry the disciplinary tribunal may—

- (a) summons any person 'who may be able to give information of material importance concerning the subject of the inquiry or who has in that person's 10 possession or custody or under that person's control any book, document or object which may have a bearing on the subject of the inquiry, to appear before the disciplinary tribunal;
- (b) call upon and administer an oath to, or accept an affirmation from, any person present at the inquiry who has or might have been summonsed in terms of 15 paragraph (a);
- (c) examine or require any person who has been called upon in terms of paragraph (b) to produce any book, document or object in that person's possession or custody or under that person's control which may have a bearing on the subject of inquiry. 20

(4) A summons for a person to appear before the disciplinary tribunal shall be—

- (a) in the prescribed form;
- (b) signed by the chairperson of the disciplinary tribunal or any other person designated by the chairperson; and
- (c) served in the prescribed manner. 25

(5) In connection with the examination of any person by, or the production of any book, document or object before, the disciplinary tribunal under this section, the law relating to privilege, as applicable to a witness summonsed to give evidence or to produce any book, document or object before a court of law, shall apply.

#### **Procedure at inquiry** 30

22. (1) The employer may authorise any person—

- (a) to attend the inquiry into the charge of misconduct;
- (b) to adduce evidence and arguments in support of the charge; and
- (c) to cross-examine any person who has given evidence in rebuttal of the charge.

(2) At the inquiry the educator concerned shall have the right to be present, to be 35 assisted or represented by another person, to give evidence and, either personally or through a representative—

- (a) to be heard;
- (b) to call witnesses;
- (c) to cross-examine any person called as a witness in support of the charge; and 40
- (d) to have access to documents produced in evidence.

(3) The disciplinary tribunal shall keep a record of the proceedings at the inquiry and of all evidence given thereat.

#### **Finding of disciplinary tribunal ,**

23. At the conclusion of the inquiry into a charge of misconduct, the disciplinary 45 tribunal shall—

- (a) find whether the educator concerned is guilty or not guilty of the misconduct with which the educator has been charged;
- (b) if the disciplinary tribunal finds that the educator is guilty of the misconduct with which the educator has been charged, make a recommendation regarding 50 any steps which may be taken under section 24(2); and
- (c) inform the educator of the finding.

#### **Steps after inquiry**

24. (1) After the conclusion of the inquiry into a charge of misconduct, the chairperson of the disciplinary tribunal shall— 55

- (a) within seven days after the making of the finding, report to the employer on the result of the inquiry; and
- (b) if the disciplinary tribunal has found that the educator concerned is guilty of the misconduct with which the educator has been charged, submit to the employer—
- (i) the record of the proceedings at the inquiry and any documentary evidence admitted thereat;
  - (ii) a written exposition of the finding of the disciplinary tribunal and the reasons therefor;
  - (iii) any remarks which the disciplinary tribunal wishes to make in connection with the inquiry; and
  - (iv) the recommendation of the disciplinary tribunal regarding any steps which may be taken under this section.
- (2) (a) If the disciplinary tribunal has found that the educator concerned is guilty of the misconduct with which the educator has been charged, or if the educator concerned admits the charge, the employer may, after having considered the documents relating to the inquiry, where applicable—
- (i) caution or reprimand the educator concerned;
  - (ii) impose upon the educator a fine not exceeding R6 000;
  - (iii) reduce the educators salary to such extent as the employer may determine;
  - (iv) discharge the educator from service with effect from such date as the employer may determine.
- (b) Except where the employer takes the steps contemplated in paragraph (a)(iv), the employer may take steps under more than one of the subparagraphs of paragraph (a), and the employer may suspend any one or more of those steps on such conditions and for such period, which period shall not exceed one year, as the employer may determine.
- (3) The employer shall as soon as possible inform the educator concerned in writing of the decision taken by the employer under subsection (2) and of that educator's right of appeal in terms of section 25.

## Appeals

25. (1) (a) An educator shall have the right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding of the disciplinary tribunal that the educator is guilty of the misconduct with which the educator has been charged or against the decision of the employer under section 24(2), or against that finding as well as that decision, within 21 days after the day on which the educator was informed of that decision in terms of section 24(3).
- (b) If the educator notes an appeal in accordance with paragraph (a), the decision of the employer shall not be implemented before the disposal of the appeal.
- (2) (a) If notice of appeal has been given in accordance with subsection (1), the employer shall furnish the educator concerned with a copy of the record of the proceedings at the enquiry and the other documents referred to in section 24(1)(b).
- (b) The educator may within 14 days after the day on which the educator received the copy of the record and other documents submit to the Minister or the Member of the Executive Council, as the case may be, representations in writing in support of the appeal.
- (c) The employer may within 14 days after the day on which the employer received a copy of the representations in writing submit to the Minister or the Member of the Executive Council, as the case may be, any reply in writing which the employer wishes to make to those representations, and shall furnish a copy of that reply to the educator concerned.
- (d) The educator may within 14 days after the day on which the educator received a copy of the reply in writing submit to the Minister or the Member of the Executive Council, as the case may be, any reply in writing which the educator wishes to make to that reply.
- (3) After having considered the documents relating to the appeal, the Minister or the Member of the Executive Council may—
- (a) in the case of an appeal against the finding that the educator concerned is guilty of the misconduct with which the educator has been charged—
    - (i) dismiss the appeal and confirm that finding; or
    - (ii) uphold the appeal wholly or in part and set aside or vary that finding;

(b) in the case of an appeal against the decision of the employer—

- (i) dismiss the appeal and confirm that decision; or
- (ii) uphold the appeal wholly or in part and set aside or vary that decision, or substitute for that decision such other decision as the employer, in the opinion of the Minister or the Member of the Executive Council, as the case may be, ought to have taken.

(4) The Minister or the Member of the Executive Council shall cause the educator who noted an appeal, and the employer to be informed in writing of the decision on the appeal.

(5) The Minister or the Member of the Executive Council, as the case may be, may 10 condone any non-compliance with a time period specified in this section upon good cause being shown.

#### **Furnishing South African Council for Educators with records**

26. In each case where steps were taken against any educator under section 24(2), other than the cautioning or reprimanding of the educator, the employer shall furnish the 15 South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto.

### CHAPTER 6

#### **SOUTH AFRICAN COUNCIL FOR EDUCATORS**

##### **Establishment**

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27. (1) The South African Council for Educators, which was established in terms of a collective agreement reached in the Education Labour Relations Council, shall be deemed to be established in terms of this Act.

(2) The South African Council for Educators is a juristic person which functions in terms of this Act. 25

(3) The current chairpersons and members of the South African Council for Educators continue to perform the functions which they performed prior to the commencement of this Act, until their current terms of office expire.

##### **Functions and powers of South African Council for Educators**

28. (1) Subject to this Act and the National Education Policy Act, 1996 (Act No. 27 30 of 1996), the South African Council for Educators shall—

- (a) establish minimum criteria and procedures for the registration or provisional registration of educators;
- (b) keep a register of the names of all persons who are registered or provisionally registered; 35
- (c) promote professional development of educators;
- (d) establish a code of professional ethics for educators which shall apply to all educators registered or provisionally registered with the Council;
- (e) establish a fair and equitable enquiry procedure and appoint a committee to investigate an alleged breach of the code of professional ethics; 40
- (f) have the power to-
  - (i) caution or reprimand;
  - (ii) impose a fine not exceeding one months' salary on; or
  - (iii) strike from the register the name of,
    - an educator found guilty of a breach of the code of professional ethics, and 45
    - may suspend a sanction imposed in terms of subparagraphs (ii) and (iii);
- (g) subject to the approval of the Minister, determine compulsory monthly fees payable to the Council in respect of educators for whom registration with the Council is compulsory;
- (h) advise the Minister on any relevant aspect or if so requested by the Minister; 50
- (i) have the power to appoint staff and to determine their conditions of service;
- (j) have the power to establish committees and assign functions to them; and

- (k) subject to this Act, perform any function which is necessary for the proper functioning of the Council.
- (2) The existing registration procedure; code of professional ethics and procedures of the South African Council for Educators remain in force until amended or repealed by the Council. 5

### **Registration with South African Council for Educators**

29. (1) A person may not be appointed as an educator unless such person is registered or provisionally registered with the South African Council for Educators.
- (2) Any person registered or provisionally registered by the South African Council for Educators prior to the commencement of this Act, is deemed to be registered in terms of the provisions of this Act. 10
- (3) Any educator not registered or provisionally registered with the South African Council for Educators at the commencement of this Act, shall apply for registration within six months after the commencement of this Act.
- (4) After a date determined by the Minister by notice in the Gazette, no employer may employ or retain in employment, an educator not registered or provisionally registered with the South African Council for Educators. 15

### **Composition, administration and functioning of South African Council for Educators**

30. The Minister shall prescribe measures and procedures in respect of— 20
- (a) the composition of the South African Council for Educators;
  - (b) the appointment of members;
  - (c) the term of office of members;
  - (d) vacation of office by members;
  - (e) filling of vacancies; 25
  - (f) the convening of meetings of the Council and its committees and the procedure at those meetings, including the quorum for such meetings; and
  - (g) any other matter which the Minister may deem necessary or expedient for the functioning of the South African Council for Educators.

### **Funds of South African Council for Educators** 30

31. (1) The funds of the South African Council for Educators consist of—
- (a) compulsory monthly fees collected through the Education Labour Relations Council from educators;
  - (b) moneys received from donations, contributions, interest or fines; and
  - (c) other income received by the South African Council for Educators from any other source. 35
- (2) The South African Council for Educators—
- (a) shall in each financial year, at such time and in such manner as the Minister may determine, submit a detailed statement of its estimated income and expenditure for the ensuing financial year to the Minister for his or her approval; 40
  - (b) may in any financial year submit adjusted statements of its estimated income and expenditure to the Minister for his or her approval; and
  - (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (a) and (b). 45
- (3) If the Minister does not approve the statement of estimated income and expenditure of the South African Council for Educators, the Minister shall require the Council to provide a revised statement within a specified period to him or her.
- (4) The funds contemplated in subsection (1) must be used by the South African Council for Educators in accordance with the approved statement referred to in subsection (2), and any unexpended balance must be carried forward as a credit to the following financial year. 50
- (5) Subject to subsection (4), the South African Council for Educators may invest any portion of its funds in a manner as the Minister may approve. "
- (6) The books of account and financial statements of the South African Council for Educators must be audited at the end of each financial year by a registered chartered accountant appointed by the Council. 55

(7) A copy of the audited financial statements shall be submitted to the Minister within three months after the end of a financial year.

### **Annual report**

32. (1) The South African Council for Educators shall, within three months after the end of each financial year, submit a report to the Minister on the performance of its functions during that financial year. 5

(2) The Minister shall table copies of the report in Parliament as soon as reasonably practicable.

## **CHAPTER 7**

### **GENERAL**

10

### **Performance of other work by educators**

33. (1) Unless an educator's conditions of service provide otherwise—

- (a) an educator shall place such time as the Minister may determine at the disposal of the employer;
- (b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work; 15
- (c) no educator may claim additional remuneration in respect of any official duty or work which the educator—
  - (i) performs voluntarily; or
  - (ii) has been ordered to perform by a competent authority. 20

(2) The employer may order an educator to perform duties on a temporary basis other than those duties ordinarily assigned to the educator which are appropriate to the grade, designation or classification of the educator's post.

### **Offences and penalties**

34. Any person who— 25

- (a) has been duly summoned under section 21(3)(a) and who fails without sufficient cause—
  - (i) to attend at the time and place specified in the summons; or
  - (ii) to remain in attendance until excused by the disciplinary tribunal from further attendance; 30
- (b) has been called upon in terms of section 21(3)(b) and who refuses to be sworn or to affirm as a witness; or
- (c) fails without sufficient cause—
  - (i) to answer fully and satisfactorily any question lawfully put to that person under section 21(3)(c); or 35
  - (ii) to produce any book, document or object in that person's possession or custody or under that person's control which that person was required to produce in terms of the said section 21(3)(c),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 40

### **Regulations**

35. The Minister may make regulations which are not inconsistent with any law relating to—

- (a) (i) the recovery of any reward, allowance or remuneration received in an irregular manner by any educator; 45
- (ii) the recovery of any portion of an allowance or salary paid erroneously to any educator, or the discontinuance or withdrawal of any other benefit awarded erroneously; and
- (iii) the payment or award of any portion of an allowance or salary or of any other benefit erroneously withheld from any educator; 50



- (b) (i) the advertising of posts;
- (ii) the establishment, composition, powers, duties and functions of selection boards to recommend persons for appointment in, or officers for promotion or transfer to, posts;
- (iii) the qualifications for appointment as, the term of office and the vacation of office of, members or temporary members of such a selection board, and the filling of casual vacancies in such a selection board;
- (iv) the appointment of a chairperson or an acting chairperson of such a selection board; and
- (v) the convening of, the procedure at, and the quorum for, meetings of such a selection board, and the manner in which resolutions shall be passed by such a selection board;
- (c) the conditions of service of educators;
- (d) any matter required or permitted to be prescribed by regulation under this Act; and
- (e) in general, any matter which the Minister may consider **necessary** or **expedient** to prescribe or regulate in order to achieve the objects of this-Act.

15

### Assignment of functions

#### 36. (1) The Minister may—

- (a) delegate to the Director-General or any other person in the service of the Department of Education any power conferred upon the Minister by or under this Act, other than the power referred to in section 16(10), 25(3) or 35, on such conditions as the Minister may determine; or
  - (b) authorise the said Director-General or person to perform any duty assigned to the Minister by or under this Act.
- 25
- (2) The Director-General may—
  - (a) delegate to any person in the service of the Department of Education any power conferred upon the Director-General by or under this Act, on such conditions as the Director-General may determine; or
  - (b) authorise the said person to perform any duty assigned to the Director-General by or under this Act.
- 30
- (3) The Member of the Executive Council may—
  - (a) delegate to the Head of Department or any other person in the service of the provincial department of education any power conferred upon the Member of the Executive Council by or under this Act, other than the power referred to in section 16(10) or 25(3), on such conditions as the Member of the Executive Council may determine; or
  - (b) authorise the said Head of Department or person to perform any duty assigned to the Member of the Executive Council by or under this Act.
- 40
- (4) The Head of Department may—
  - (a) delegate to any person in the service of the provincial department of education any power conferred upon the Head of Department by or under this Act, on such conditions as the Head of Department may determine; or
  - (b) authorise the said person to perform any duty assigned to the Head of Department by or under this Act.
- 45

### Repeal of Act promulgated under Proclamation 138 of 1994, and savings

37. (1) Subject to the provisions of subsection (2), the Educators' Employment Act, 1994, is hereby repealed.

(2) Anything done under the said Act and which could be done under a provision of this Act, shall be deemed to have been done under that provision.

50

(3) Notwithstanding the repeal of the said Act, any inquiry into inefficiency and any proceedings in respect of a charge of misconduct instituted or commenced under the said Act shall be continued and concluded as if the said Act had not been repealed.

(4) Notwithstanding the repeal of the said Act, the regulations which were made under the said Act and were in force immediately before the commencement of this Act, and 55

which are not inconsistent with this Act, shall continue in force until they are repealed, withdrawn or amended by regulations made under section 35 of this Act.

**Transitional** arrangements in respect of certain colleges

38. (1) In this section—

“college” means a college of education, technical college, youth college, 5  
community college, state-aided college, state college or other college which is  
wholly or partly funded by the State in respect of the salaries and other conditions  
of service of persons—

(a) holding posts on the establishment of that college which had been created 10  
under section 3(1) of the repealed Act; or

(b) employed additional to the said establishment under the repealed Act;  
and

“the repealed Act” means the Educators’ Employment Act, 1994 (promulgated  
under Proclamation No. 138 of 1994).

(2) In order to deal effectively with any matter relating to the employment of 15  
educators at any college until such time as that college is declared to be a higher  
education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or a  
further education and training institution under the Further Education and Training Act,  
1998, as the case may be—

(a) any post on the establishment of that college which had been created 20  
immediately before the commencement of this Act by the Member of the  
Executive Council under section 3(1) of the repealed Act shall, notwithstand-  
ing the provisions of section 37(1), continue to exist and shall, for the  
purposes of this Act, be deemed to be a post created by the Member of the  
Executive Council under section 5(1)(b) and allocated to that college by the 25  
Head of Department under section 5(2);

(b) the establishment of that college consisting immediately before the com-  
mencement of this Act of posts which had been so created shall, notwithstand-  
ing the provisions of the said section 37(1), continue to exist and shall, for the  
purposes of this Act, be deemed to be an educator establishment of that 30  
college as contemplated in section 5(2);

(c) any person who, immediately before the commencement of this Act—

(i) was holding any post which had been so created shall, notwithstanding  
the provisions of the said section 37(1), continue to hold that post and  
shall, for the purposes of this Act, be deemed to have been appointed in, 35  
or promoted or transferred to, the post concerned under Chapter 3, as the  
case may be;

(ii) was employed additional to that establishment under the repealed Act  
shall, notwithstanding the provisions of the said section 37(1), continue  
to be so employed and shall, for the purposes of this Act, be deemed to 40  
have been so employed under this Act;

(d) the salary and other conditions of service applicable to that person  
immediately before the commencement of this Act shall, notwithstanding the  
provisions of the said section 37(1), continue to be applicable to that person  
and shall, for the purposes of this Act, be deemed to have been determined by 45  
the Minister under section 4 in respect of the person concerned,

and the provisions of this Act shall, with the necessary changes, apply in respect of that  
college, post, establishment, person, salary or conditions of service, and the Member of  
the Executive Council, the Head of Department and the Minister shall have all such  
powers, duties and functions assigned by or under this Act to them in relation to— 50

(i) a public school;

(ii) a post on the educator establishment of the said school;

(iii) the said educator establishment;

(iv) an educator holding the said post or employed additional to the said educator  
establishment; or 55

(v) the salary or other conditions of service of the said educator,

as are necessary to deal with any such matter: Provided that any inquiry into inefficiency  
and any proceedings in respect of a charge of misconduct instituted or commenced

against that person under the repealed Act shall be continued and concluded as if the said section 37(1) had not been enacted.

(3) (a) Subject to the provisions of this Act the Labour Relations Act, a college may create posts additional to the establishment contemplated in subsection (2).

(b) The college shall be the employer of persons holding the said posts. 5

(4) The provisions of this section, other than the proviso to subsection (2), shall cease to apply to the college, post, establishment, person, salary or conditions of service concerned on the date on which that college is declared to be a higher education institution under the Higher Education Act, 1997, or a further education and training institution under the Further Education and Training Act, 1998, as the case may be. 10

**Short title**

39. This Act shall be called the Employment of Educators Act, 1998,

## MEMORANDUM ON THE OBJECTS OF THE EMPLOYMENT OF EDUCATORS BILL, 1998

### 1. OBJECTS

One of the objects of the Bill is to repeal the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994),

It was necessary to promulgate the Educators' Employment Act, 1994, in order to put into operation a single law governing the employment of educators in the national territory of the Republic of South Africa. The said Act rationalised and consolidated the 16 Education Acts and 4 Education Ordinances which regulated the employment of educators in the racially divided education system prior to 1994. Although it was possible to administer the provisions relating to the employment of educators effectively until now, certain shortcomings became evident which made it necessary to review the said Act.

The Bill addresses various matters, the most important of which are set out below:—

- \* It is being proposed that the Bill regulates the employment of educators at public schools, further education and training institutions, departmental offices and adult basic education centres.
- \* Provision is being made for the determination of the employers of educators, for educator establishments, including the allocation of posts to educational institutions from provincial educator establishments, for obtaining the recommendation of the governing body of a public school or the council of a further education and training institution before making any appointment, promotion or transfer in respect of such school or institution, and for the sharing of a post by more than one educator.
- \* The Bill contains express provisions relating to the retirement of educators and the disciplinary steps to be taken in the case of incapacity and misconduct.
- \* Transitional arrangements are being proposed in respect of certain colleges.

### 2. INTERESTED PARTIES CONSULTED

The legislative proposals were discussed with all the national organisations and unions of the organised educator profession, i.e. the South African Democratic Teachers Union (SADTU), the National Professional Teachers Organisation of South Africa (NAPTOSA) and the *Suid-Afrikaanse Onderwysersunie (SAOU)*.

The Department of Education also consulted the Department of Finance and the Department of Public Service and Administration. Subsequently, the Heads of the Education Departments Committee and the Council of Education Ministers advised the Minister of Education to proceed to introduce the Bill in the National Assembly.

### 3. PARLIAMENTARY PROCEDURE

The Department of Education and the State Law Advisers are of the opinion that the procedure established by section 76 of the Constitution should be followed with regard to the Bill.